

Claimant suffered accidental injury arising out of and in the course of his employment with respondent on December 15, 2004, when he was crushed between a 2,200-pound I-beam he was working on and a 26,000-pound piece of steel which was swinging on a crane. Claimant suffered significant injuries and ultimately was unable to return to his employment with respondent. The matter proceeded to litigation, but settled on May 18, 2006, at which time claimant was paid a lump sum of \$65,000 in a full and complete settlement of all issues except for future medical treatment which remained open as part of the settlement.

On August 31, 2006, the matter came before the ALJ upon claimant's request for additional psychiatric care, with claimant alleging that he suffers from post traumatic stress disorder (PTSD). Claimant was denied his requested psychiatric treatment after the ALJ determined claimant's problems were not related to the accident with respondent.

Substantial health information on claimant was introduced at the Post Award Hearing. Claimant was treated for several months by Michael J. Pronko, M.D., board certified in psychology and neurology. Claimant testified that Dr. Pronko diagnosed him with PTSD, but Dr. Pronko's records do not contain such a diagnosis. They do discuss claimant having nightmares, noise sensitivity, fear of being trapped, breaking out in a cold sweat when he returns to his place of employment with respondent and anger. Claimant ultimately quit going to Dr. Pronko, testifying that the doctor would fall asleep while claimant was in a treatment session.

Claimant ultimately came under the treatment of the health care providers at the Wyandot Center. This was a self referral. Pir Shah, M.D., a psychiatrist at the Wyandot Center, conducted a psychiatric evaluation. In his report regarding that evaluation, Dr. Shah memorialized a significant family and military history. Claimant's mother and half-brother suffered from paranoia. His maternal grandmother was reported as having schizophrenia, but claimant said she had paranoia as well. Claimant's father was bipolar and had a history of substance abuse and anger problems. Claimant admitted being diagnosed with depression in 1990 to 1991 while in the Air Force. Claimant began drinking heavily at the age of 15, and was a heavy drinker in the Air Force. Claimant was offered a psychiatric evaluation by the Air Force, but elected to voluntarily terminate his military service instead. He did see a psychiatrist in the 1990s, being prescribed at different times Xanax, Prozac, Paxil and Zoloft. However, the side effects of many of these medications were significant, and claimant did not continue the treatment.

Dr. Shah discussed the possibility of PTSD, but ultimately diagnosed claimant with bipolar disorder. Dr. Shah also discussed claimant's regular use of marijuana, noting that it was unclear how much it was contributing to claimant's symptoms. Claimant also had uncontrolled hypertension. Dr. Shah placed claimant on Depakote, which resulted in claimant experiencing three to four migraine headaches per day. Claimant had experienced migraines as a child. This treatment regime was unsatisfactory to claimant, and he transferred to other health care providers, including Benjamin Thatcher, D.O., and Judy Kotecki-Martin, LCP.

Numerous medical notes from the Wyandot Center described claimant's family history as involving claimant being kidnaped by his father when he was 2, being molested by a neighbor when he was 10 (for which he received psychiatric treatment for a short time), claimant being raised at different times by an alcoholic, abusive father to the age of 17, and incidents where claimant's father, his father's girlfriend and claimant all pulled guns, one time during which claimant actually fired the gun into the floor. Claimant also reported to Wyandot Center personnel that he was stressed, being recently advised that

DNA testing confirmed he was the father of a 9-year-old boy in Ohio, for which claimant was being asked to pay \$320 a month in child support, but was being denied visitation rights by the boy's mother.

The reports from the Wyandot Center discuss claimant reporting having been diagnosed with PTSD, but the health care providers do not actually diagnose claimant with the condition. Instead, claimant is diagnosed as being bipolar by more than one health care provider.

Throughout this entire file is an undercurrent associated with claimant's reaction to the severe and traumatic injuries suffered while working with respondent. Claimant is shown as being filled with anger, rage and hatred, as well as having significant fear associated with the date of accident, fear of being in confined spaces, fear of being trapped between objects, and even a fear of his welding mask which he was wearing at the time of the accident.

The record also displays claimant's long history of psychological stressors, from his upbringing to his traumatic teen years and his military experiences. While workplace injuries do not have to be the original source of an injury or a psychological trauma, there does need to be evidence connecting the need for ongoing psychiatric care to the work-related injuries.

In workers compensation litigation, it is the claimant's burden to prove his/her entitlement to benefits by a preponderance of the credible evidence.<sup>1</sup>

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.<sup>2</sup>

It is well established under the Workers Compensation Act in Kansas that when a worker's job duties aggravate or accelerate an existing condition or disease, or intensify a preexisting condition, the aggravation becomes compensable as a work-related accident.<sup>3</sup>

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<sup>1</sup> K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

<sup>2</sup> *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

<sup>3</sup> *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

In workers compensation litigation, it is not necessary that work activities cause an injury. It is sufficient that the work activities merely aggravate a preexisting condition. This can also be compensable.<sup>4</sup>

The Board finds that while claimant has an obvious ongoing need for psychiatric counseling, claimant has failed to prove that his current need for ongoing psychiatric care stems from the traumatic accident suffered while working for respondent. The records in evidence do discuss claimant's ongoing problems and the fact he had a significant work-related injury. However, the records fail to relate claimant's numerous problems and need for ongoing care to the injuries suffered while working for respondent. Therefore, the post-award denial of psychiatric care by the ALJ should be affirmed.

Any request for post-award attorney fees pursuant to K.S.A. 2004 Supp. 44-510k should first be submitted to and determined by the ALJ.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Post Award Decision of Administrative Law Judge Robert H. Foerschler dated November 28, 2006, should be, and is hereby affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 2007.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James E. Martin, Attorney for Claimant  
John M. Graham, Jr., Attorney for Respondent and its Insurance Carrier  
Robert H. Foerschler, Administrative Law Judge

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<sup>4</sup> *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984).